**HIGH COURT OF UTARANCHAL AT NAINITAL**

**Second Appeal No. 43 of 2006**

Basheer Ahmad Ansari S/o Hasmatulla Ansari,
R/o Khajanchi Mohalla, Almora. ....Appellant.

**Vs**

1. Mehraj Ansari S/o Basheer Ahmad Ansari
   R/o Bhiyarkhola, Rajpur Almora.
2. Nagarpalika Parishad Almora through
   Executive Officer, Nagarpalika Parishad Almora.

...Respondents

Sri R.C. Upadhyay learned counsel for the appellant.

Dated: -28-6-2006

**Hon'ble B.S. Verma, J.**

Heard Sri R.C. Upadhyay learned counsel for the appellant.

The Second appeal has been filed by the plaintiff/appellant against the Judgment and decree dated 26-5-2006 passed by Mr. P.K. Agarwal, District Judge, Almora in Civil Appeal No.15/2005 Mehraj Ansari Vs. Basheer Ahmad and others.

This appeal was allowed by the District Judge on the ground that it is proved by the evidence that the respondent/defendant No.1 Mahraj Ansari was in possession of the Fad in question alleged by NagarPalika and this fact is also admitted by the plaintiff and he has moved an application in 2003 before Executive officer for getting back his possession of the Fad in question.

Learned District Judge has also submitted that the plaintiff was not in possession on the date of suit. Hence, the suit for permanent injunction is not maintainable. Learned District Judge allowing the appeal and set aside the decree passed by the Trial Court on 11-10-2005.

It is a finding of fact that whether the plaintiff is in possession or the defendant/respondent No.1 was in possession on the date of suit. The appellate Court gave a categorical finding that the plaintiff was not in

possession on the basis of cogent evidence and relying the admission of the plaintiff.

The 2nd appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

I find no substantial question of law involved in this appeal. Finding of fact has been concluded by the appellate Court.

In view of the above facts, the appeal is dismissed in limine.

**(B.S. Verma,J)**

Dated:- 28-6-2006